

SENATE BILL No. 265

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-24-15-4; IC 9-30-4-6; IC 34-24-1-1; IC 35-44-3-3.

Synopsis: Resisting law enforcement and license suspension. Provides that the driver's license of a person convicted of resisting law enforcement while using a vehicle will be suspended for one year after the date the person is convicted (if the person is not incarcerated) or released from incarceration. Specifies in which court a petition for a hardship license must be filed. Requires the court to notify the bureau of motor vehicles of the person's conviction, and specifies that the convicted person has the burden of applying for a new or renewal license and establishing that the one year period has elapsed. Authorizes the forfeiture of a vehicle used to commit resisting law enforcement if the person has a prior unrelated conviction for resisting law enforcement in the past ten years.

Effective: July 1, 2010.

Arnold

January 11, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 265

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-24-15-4, AS AMENDED BY P.L.127-2008,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 4. (a) A verified petition filed under section 2 of
4 this chapter must be filed in the circuit court or superior court of the
5 county in which the petitioner resides. However, if at the time the
6 petition is filed:

7 (1) the petitioner is a defendant in a pending case concerning the
8 commission of an offense described in IC 9-30-5;

9 (2) the petitioner is on probation after being convicted of
10 committing an offense described in IC 9-30-5; ~~or~~

11 (3) the petitioner's driving privileges have been suspended under
12 IC 35-48-4-15 after the petitioner was convicted of committing an
13 offense described in IC 35-48-4-15(a); **or**

14 **(4) the petitioner's driving privileges have been suspended in**
15 **accordance with IC 9-30-4-6(b)(3) following the petitioner's**
16 **conviction in Indiana for a felony;**

17 the petition may be filed only in the circuit court or superior court in



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1 which the case is pending or the petitioner was convicted.

2 (b) The clerk of the court shall docket the verified petition in the
3 name of the petitioner against the prosecuting attorney of the county.

4 (c) The prosecuting attorney shall appear in person or by deputy and
5 be heard by the court on the petition.

6 (d) The bureau:

7 (1) serves as a recordkeeper; and

8 (2) is not a party;

9 in a proceeding under this chapter.

10 SECTION 2. IC 9-30-4-6 IS AMENDED TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) Whenever the bureau
12 suspends or revokes the current driver's license upon receiving a record
13 of the conviction of a person for any offense under the motor vehicle
14 laws not enumerated under subsection (b), the bureau may also suspend
15 any of the certificates of registration and license plates issued for any
16 motor vehicle registered in the name of the person so convicted.
17 However, the bureau may not suspend the evidence of registration,
18 unless otherwise required by law, if the person has given or gives and
19 maintains during the three (3) years following the date of suspension
20 or revocation proof of financial responsibility in the future in the
21 manner specified in this section.

22 (b) The bureau shall suspend or revoke without notice or hearing the
23 current driver's license and all certificates of registration and license
24 plates issued or registered in the name of a person who is convicted of
25 any of the following:

26 (1) Manslaughter or reckless homicide resulting from the
27 operation of a motor vehicle.

28 (2) Perjury or knowingly making a false affidavit to the
29 department under this chapter or any other law requiring the
30 registration of motor vehicles or regulating motor vehicle
31 operation upon the highways.

32 (3) A felony under Indiana motor vehicle laws or felony in the
33 commission of which a motor vehicle is used.

34 (4) Three (3) charges of criminal recklessness involving the use
35 of a motor vehicle within the preceding twelve (12) months.

36 (5) Failure to stop and give information or assistance or failure to
37 stop and disclose the person's identity at the scene of an accident
38 that has resulted in death, personal injury, or property damage in
39 excess of two hundred dollars (\$200).

40 (6) Possession, distribution, manufacture, cultivation, transfer,
41 use, or sale of a controlled substance or counterfeit substance, or
42 attempting or conspiring to possess, distribute, manufacture,

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1 cultivate, transfer, use, or sell a controlled substance or
2 counterfeit substance.

3 (c) The license of a person shall also be suspended upon conviction
4 in another jurisdiction for any offense described in subsections (b)(1),
5 (b)(2), (b)(3), (b)(4), and (b)(5), except if property damage is less than
6 two hundred dollars (\$200), the bureau may determine whether the
7 driver's license and certificates of registration and license plates shall
8 be suspended or revoked. The license of a person shall also be
9 suspended upon conviction in another jurisdiction for any offense
10 described in subsection (b)(6).

11 (d) A suspension or revocation remains in effect and a new or
12 renewal license may not be issued to the person and a motor vehicle
13 may not be registered in the name of the person as follows:

14 (1) Except as provided in subdivisions (2), ~~and~~ (3), **and (4)**, for
15 six (6) months from the date of conviction or on the date on which
16 the person is otherwise eligible for a license, whichever is later.
17 Except as provided in IC 35-48-4-15, this includes a person
18 convicted of a crime for which the person's license is suspended
19 or revoked under subsection (b)(6).

20 (2) Upon conviction of an offense described in subsection (b)(1),
21 for a fixed period of not less than two (2) years and not more than
22 five (5) years, to be fixed by the bureau based upon
23 recommendation of the court entering a conviction. A new or
24 reinstated license may not be issued to the person unless that
25 person, within the three (3) years following the expiration of the
26 suspension or revocation, gives and maintains in force at all times
27 during the effective period of a new or reinstated license proof of
28 financial responsibility in the future in the manner specified in
29 this chapter. However, the liability of the insurance carrier under
30 a motor vehicle liability policy that is furnished for proof of
31 financial responsibility in the future as set out in this chapter
32 becomes absolute whenever loss or damage covered by the policy
33 occurs, and the satisfaction by the insured of a final judgment for
34 loss or damage is not a condition precedent to the right or
35 obligation of the carrier to make payment on account of loss or
36 damage, but the insurance carrier has the right to settle a claim
37 covered by the policy. If the settlement is made in good faith, the
38 amount shall be deductive from the limits of liability specified in
39 the policy. A policy may not be canceled or annulled with respect
40 to a loss or damage by an agreement between the carrier and the
41 insured after the insured has become responsible for the loss or
42 damage, and a cancellation or annulment is void. The policy may

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provide that the insured or any other person covered by the policy shall reimburse the insurance carrier for payment made on account of any loss or damage claim or suit involving a breach of the terms, provisions, or conditions of the policy. If the policy provides for limits in excess of the limits specified in this chapter, the insurance carrier may plead against any plaintiff, with respect to the amount of the excess limits of liability, any defenses that the carrier may be entitled to plead against the insured. The policy may further provide for prorating of the insurance with other applicable valid and collectible insurance. An action does not lie against the insurance carrier by or on behalf of any claimant under the policy until a final judgment has been obtained after actual trial by or on behalf of any claimant under the policy.

(3) For the period ordered by a court under IC 35-48-4-15.

(4) If the person is convicted of a felony involving the use of a motor vehicle under IC 35-44-3-3(b), for one (1) year after the date the person:

(A) was convicted, if the person was not sentenced to a term of incarceration; or

(B) was released from incarceration, if the person was sentenced to a term of incarceration.

The convicted person has the burden of applying for a new or renewal license and establishing that the one (1) year period described in this subdivision has elapsed.

(e) The bureau may take action as required in this section upon receiving satisfactory evidence of a conviction of a person in another state.

(f) For the purpose of this chapter, "conviction" includes any of the following:

(1) A conviction upon a plea of guilty.

(2) A determination of guilt by a jury or court, even if:

(A) no sentence is imposed; or

(B) a sentence is suspended.

(3) A forfeiture of bail, bond, or collateral deposited to secure the defendant's appearance for trial, unless the forfeiture is vacated.

(4) A payment of money as a penalty or as costs in accordance with an agreement between a moving traffic violator and a traffic violations bureau.

(g) A suspension or revocation under this section or under IC 9-25-6-8 stands pending appeal of the conviction to a higher court and may be set aside or modified only upon the receipt by the bureau of the certificate of the court reversing or modifying the judgment that

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the cause has been reversed or modified. However, if the suspension or revocation follows a conviction in a court of no record in Indiana, the suspension or revocation is stayed pending appeal of the conviction to a court of record.

(h) A person aggrieved by an order or act of the bureau under this section or IC 9-25-6-8 may file a petition for a court review.

SECTION 3. IC 34-24-1-1, AS AMENDED BY P.L.143-2009, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-1.5.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in

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an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment, including computer equipment and cellular

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telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; ~~or~~

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; **or**

(C) while resisting law enforcement, while using a vehicle in violation of IC 35-44-3-3, if in the previous ten (10) years the person has a prior unrelated conviction for resisting law enforcement while using a vehicle in violation of IC 35-44-3-3.

If a court orders the seizure of a motor vehicle under this

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subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) The following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(B) Property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly as a result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a

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Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 4. IC 35-44-3-3, AS AMENDED BY P.L.143-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) A person who knowingly or intentionally:

(1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties;

(2) forcibly resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop;

commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Class D felony if:

(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person draws or uses a deadly weapon, inflicts bodily injury on or otherwise causes bodily injury to another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;

(2) Class C felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes serious bodily injury to another person; and

(3) Class B felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of another person.

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(c) For purposes of this section, a law enforcement officer includes an enforcement officer of the alcohol and tobacco commission and a conservation officer of the department of natural resources.

(d) If a person uses a vehicle to commit a felony offense under subsection (b)(1)(B), (b)(2), or (b)(3), as part of the criminal penalty imposed for the offense, the court shall impose a minimum executed sentence of at least:

(1) thirty (30) days, if the person does not have a prior unrelated conviction under this section;

(2) one hundred eighty (180) days, if the person has one (1) prior unrelated conviction under this section; or

(3) one (1) year, if the person has two (2) or more prior unrelated convictions under this section.

(e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, the mandatory minimum sentence imposed under subsection (d) may not be suspended.

(f) If a person is convicted of an offense involving the use of a motor vehicle under subsection (b)(1)(A), (b)(2), or (b)(3), the court shall notify the bureau of motor vehicles to suspend or revoke the person's driver's license and all certificates of registration and license plates issued or registered in the person's name in accordance with IC 9-30-4-6(b)(3) for the period described in IC 9-30-4-6(d)(4). The court shall inform the bureau whether the person has been sentenced to a term of incarceration. At the time of conviction, the court may obtain the person's current driver's license and return the license to the bureau of motor vehicles.

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